UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE TREMONT SECURITIES LAW, STATE LAW AND INSURANCE LITIGATION	Master File No.: 08 Civ. 11117 (TPG)
This Document Relates to: All Actions	

2005 TOMCHIN FAMILY CHARITABLE TRUST'S PARTIAL JOINDER IN LAKEVIEW INVESTMENT, LP'S RESPONSE TO THE PARTIES' PAPERS IN SUPPORT OF FINAL APPROVAL (DOCS. 512, 520)

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2005 Tomchin Family Charitable Trust ("Tomchin") hereby joins in plaintiff and objector Lakeview Investment, LP's Response (Doc. 534, 535) to the parties' further submissions (Doc. 512, 520) in support of Final Approval of the Proposed Settlement of class action and derivative claims pertaining to Rye Select Broad Market XL Fund, LP ("XL Fund"). On February 4, 2009, Tomchin filed its Derivative Complaint, derivatively on behalf of XL Fund, in the Supreme Court of the State of New York, County of New York, Case No. 09-600332. Among other reasons for its objection and partial joinder, the uncompensated release of XL Fund's derivative claims, especially its claims against swap counterparties, such as HSBC and Fortis (ABN AMRO Bank), is not fair, reasonable, or adequate. By virtue of its investments in swap transactions, XL Fund has highly valuable and unique not shared by other Tremont-managed funds. Rather than pursue these claims, plaintiffs have abandoned them to secure benefits, not shared by XL Fund, on behalf of other Settlement class members that invested in other funds, such as Rye Select Broad Market Fund, LP ("Market Fund" and Rye Select Broad Market Prime Fund, LP ("Prime Fund"). This is plainly improperly, and it precludes approval of the Proposed Settlement. *See*, *e.g.*, National Super Spuds, Inc. v. N.Y. Mercantile Exch., 660 F.2d 9, 19 (2d Cir. 1981) ("An advantage to the class, no matter how great, simply cannot be bought by the uncompensated sacrifice of claims of members, whether few or many"); TBK Partners, Ltd. v. W. Union Corp., 675 F.2d 456, 461 (2d Cir. 1982) ("special care must be taken to ensure that the release of a claim not asserted within a class action or not shared alike by all class members does not represent an "advantage to the class ... by the uncompensated sacrifice of claims of members, whether few or many."); Mirfashi v. Fleet Mortgage Corp., 356 F.3d 781, 783-785 (7th Cir. 2004) (Posner, J.) (vacating settlement where one of the classes "received absolutely nothing, while surrendering all of its claims"); Molski v. Gleich, 318 F.3d 937, 955 (9th Cir. 2003).

Tomchin is presently preparing to amend its Derivative Complaint to specifically plead the highly valuable derivative claims that it has against swap counterparties. These claims—which involve, *inter alia*, breach of contract, rescission based upon mutual mistake and negligent misrepresentation—are not shared by other Tremont-managed funds. They are unique to XL Fund and should be vigorously pursue, not traded away to obtain benefits for investors in other funds, especially where, as in this case, no named plaintiff has standing to pursue such claim on behalf of XL Fund, and the General Partner and other persons who control XL Fund are not competent to do so. *See*, *e.g.*, *Clark v. Lomas & Nettleton Fin. Corp.*, 625 F.2d 49, 52-54 (5th Cir. 1980) (in derivative case, vacating settlement negotiated between defendants and corporate directors after 18 months of discovery by shareholders derivatively representing corporation; where "directors stood 'in a dual relation [that] prevent[ed] an unprejudiced exercise of judgment,'" shareholders were the only proper representatives authorized to pursue claims derivatively under Rule 23.1, and corporation's directors "were incompetent themselves to compromise all of [shareholders'] derivative claims").

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Respectfully submitted,

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